

Message Text

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ORIGIN EB-07

INFO OCT-01 NEA-10 ISO-00 FEA-01 STR-04 AGR-05 CEA-01

CIAE-00 COME-00 DODE-00 FRB-03 H-02 INR-07 INT-05

L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15

TAR-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01 /091 R

DRAFTED BY EB/IFD/OIA:TRBRODERICK

APPROVED BY EB/IFD/OIA:RJSMITH

L/EB:SBOND (DRAFT)

L/NEA:JROHWER (DRAFT)

EB/ITP/OT/GCP:MGOLDMAN (DRAFT

NEA/PAB:AGRIFFIN (DRAFT)

NEA/RA:HMONTGOMERY (INFO)

TREASURY:FMARESCA

COMMERCE:DARRILL (DRAFT)

CIEP:GKAMENS (INFO)

STR:TGRAHAM (INFO)

AID/GC:WWARREN (SUBS)

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P 080122Z NOV 75

FM SECSTATE WASHDC

TO AMEMBASSY DACCA PRIORITY

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: EXPROPRIATED U.S. FIRMS AND ELIGIBILITY FOR
GENERALIZED PREFERENCES (GSP)

REFS: (A) DACCA 5250; (B) DACCA 5246; (C) DACCA 4873;
(D) DACCA 4779; (E) STATE A-10523 (DEC. 28, 1973)

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1. INTERAGENCY COMMITTEE CONSIDERING RECOMMENDATIONS TO

THE PRESIDENT CONCERNING COUNTRY ELIGIBILITY FOR GSP UNDER EXPROPRIATION PROVISION (SEC. 502(B)(4)) OF THE TRADE ACT OF 1974 HAS NOT YET COMPLETED ITS REVIEW OF A NUMBER OF "GRAY-AREA" COUNTRIES, INCLUDING BANGLADESH, AND IT WILL BE RECONSIDERING THE CONTINUED ELIGIBILITY OF SUCH COUNTRIES BEFORE THE PLANNED TIME FOR IMPLEMENTATION OF GSP ON JANUARY 1, 1976. IF APPROPRIATE, WE WILL RECOMMEND NECESSARY CHANGES TO THE LISTS OF ELIGIBLE BENEFICIARIES AT THAT TIME.

2. WITH PARTICULAR REFERENCE TO BANGLADESH, DESPITE CONTINUING BDG ASSURANCES REGARDING COMPENSATION REPORTED REFS A THROUGH D, IT WILL BE DIFFICULT TO SUSTAIN A DETERMINATION THAT BANGLADESH IS TAKING STEPS TO DISCHARGE ITS INTERNATIONAL OBLIGATIONS AS REQUIRED BY SEC. 502(B); (4)(D)(IIGL OF THE ACT UNLESS SIGNIFICANT PROGRESS TOWARD

SETTLEMENT OF LONGSTANDING AMERICAN CLAIMS IS MADE PRIOR TO OUR DECEMBER REVIEW. ILLUSTRATIVE INTERIM STEPS BY THE BDG MIGHT INCLUDE ANNOUNCING A SATISFACTORY COMPENSATION POLICY AND ESTABLISHING THE ADMINISTRATIVE MACHINERY NECESSARY TO IMPLEMENT IT (AS REPORTEDLY INTENDED PER REF A), OR OTHERWISE BEGINNING SERIOUS DISCUSSIONS OR NEGOTIATIONS WITH INTERESTED FIRMS ON COMPENSATION.

3. IF WE WERE UNABLE TO SUSTAIN SUCH A DETERMINATION, BANGLADESH WOULD LOSE ITS ELIGIBILITY FOR GSP UNLESS THE PRESIDENT INVOKED A "NATIONAL ECONOMIC INTEREST" WAIVER. WE HAVE NOT YET CONSIDERED WHETHER SUCH WAIVER WOULD BE FEASIBLE OR APPROPRIATE FOR BANGLADESH.

4. EMBASSY SHOULD ALSO BE AWARE OF SIMILAR

LEGISLATION CALLING FOR THE USG TO SUSPEND BILATERAL ASSISTANCE, AND TO VOTE NEGATIVELY ON LOANS UNDER CONSIDERATION IN INTERNATIONAL FINANCIAL INSTITUTIONS, TO COUNTRIES WHICH EXPROPRIATE AMERICAN PROPERTY IN VIOLATION OF INTERNATIONAL LAW (THE HICKENLOOPER AND GONZALEZ AMENDMENTS, RESPECTIVELY). THERE IS NO EXPRESS LIMITED OFFICIAL USE

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OR AUTOMATIC LINKAGE BETWEEN THE THREE PROVISIONS (AND THE GONZALEZ AMENDMENT HAS NO "NATIONAL INTEREST" OR "NATIONAL ECONOMIC INTEREST" WAIVER, AS DO HICKENLOOPER AND 502 (B)(4), RESPECTIVELY), BUT THERE ARE SIMILARITIES IN LANGUAGE AND INTENTION. AN ADVERSE FINDING UNDER 502 (B)(4) WOULD AS A PRACTICAL MATTER INCREASE THE LIKELIHOOD THAT THE USG WOULD APPLY HICKENLOOPER. IT IS ALMOST CERTAIN THAT THE USG WOULD APPLY GONZALEZ IN THESE CIR-

CUMSTANCES.

5. TO PUT THE BDG ON NOTICE OF POSSIBLE TERMINATION OF GSP ELIGIBILITY, AND TO ENCOURAGE STEPS RESULTING IN SIGNIFICANT PROGRESS TOWARD SETTLEMENT BEFORE ANY SUCH DECISION IS MADE, EMBASSY SHOULD MAKE FOLLOWING POINTS TO APPROPRIATE BDG OFFICIALS:

A. WE HAVE RECENTLY BEEN CONDUCTING A REVIEW OF COUNTRY ELIGIBILITY FOR GSP UNDER THE EXPROPRIATION PROVISION OF THE TRADE ACT OF 1974. FOR THE TIME BEING, WE HAVE CONCLUDED THAT BANGLADESH SHOULD RETAIN ITS STATUS AS AN ELIGIBLE BENEFICIARY DEVELOPING COUNTRY.

B. WE WILL, HOWEVER, BE RECONSIDERING THE ELIGIBILITY OF A NUMBER OF COUNTRIES, INCLUDING BANGLADESH, BEFORE THE PLANNED TIME FOR IMPLEMENTATION OF GSP ON JANUARY 1, 1976, AND, IF APPROPRIATE, WILL MAKE NECESSARY CHANGES TO THE LISTS OF ELIGIBLE BENEFICIARIES AT THAT TIME.

C. IN PARTICULAR, IT WILL BE DIFFICULT TO SUSTAIN A DETERMINATION THAT BANGLADESH IS TAKING STEPS TO DISCHARGE ITS OBLIGATIONS TO U.S. PROPERTY OWNERS UNDER INTERNATIONAL LAW AS REQUIRED BY THE ACT UNLESS THE BDG TAKES STEPS SOON RESULTING IN SIGNIFICANT PROGRESS TOWARD SETTLEMENT OF LONGSTANDING AMERICAN CLAIMS. SUCH STEPS MIGHT INCLUDE ANNOUNCING A FAIR COMPENSATION POLICY AND ESTABLISHING THE ADMINISTRATIVE MACHINERY NECESSARY TO IMPLEMENT IT, OR OTHERWISE BEGINNING SERIOUS DISCUSSIONS OR NEGOTIATIONS WITH THE AFFECTED AMERICAN FIRMS ON COMPENSATION.

D. IF WE WERE UNABLE TO SUSTAIN SUCH A DETERMINATION, LIMITED OFFICIAL USE

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BANGLADESH COULD BE EXPECTED TO LOSE ITS ELIGIBILITY FOR GSP. IN ADDITION, THE BDG SHOULD BE AWARE OF SIMILAR LEGISLATION CALLING FOR THE USG TO SUSPEND BILATERAL ASSISTANCE, AND TO VOTE NEGATIVELY ON LOANS UNDER CONSIDERATION IN INTERNATIONAL DEVELOPMENT BANKS, TO COUNTRIES WHICH EXPROPRIATE AMERICAN PROPERTY WITHOUT DISCHARGING THEIR OBLIGATIONS TO U.S. CITIZENS UNDER INTERNATIONAL LAW (THE HICKENLOOPER AND GONZALEZ AMENDMENTS, RESPECTIVELY). GIVEN THE SIMILARITIES BETWEEN THESE PROVISIONS IN LANGUAGE AND INTENTION, AN ADVERSE FINDING UNDER THE TRADE ACT WOULD MAKE IT DIFFICULT TO AVOID TAKING THE REQUISITE ACTION UNDER HICKENLOOPER AND GONZALEZ.

E. WE ARE HTPEFUL THAT SIGNIFICANT PROGRESS WILL BE MADE
SOON TOWARD RESOLVING OUTSTANDING AMERICAN CLAIMS IN
BANGLADESH.

6. FOR THE EMBASSY'S INFORMATION, GENERAL GUIDANCE ON
USG VIEW OF REQUIREMENTS OF INTERNATIONAL LAW WITH RESPECT
TO EXPROPRIATED PROPERTY, AND ON POST'S ROLE IN HANDLING
INVESTMENT DISPUTES, PREVIOUSLY PROVIDED REF E.

7. SIMILAR CABLE BEING SENT TO U.S. EXECUTIVE DIRECTOR

ADB INSTRUCTING HIM TO REQUEST ADB TO USE ITS GOOD
OFFICES TO IMPRESS ON THE BDG NED TO MOVE RAPIDLY TOWARD
RESOLVING EXPROPRIATION PROBLEMS.

8. FYI. FOR AMBASSADOR. USG DOES NOT WISH TO PROVOKE A
CONFRONTATION WITH THE BDG OVER THIS EXPROPRIATION ISSUE.
WE DO, HOWEVER, HAVE U.S. LEGISLATION RELATED TO EXPRO-
PRIATION, AND IN ORDER TO MEET THESE PROVISIONS IT IS
IMPORTANT THAT WE ARE ABLE TO DEMONSTRATE FORWARD
PROGRESS BY THE BDG. WE WOULD APPRECIATE YOUR HELP IN
IMPRESSING UPON THE BDG THE IMPORTANCE OF MOVING FORWARD
ESPECIALLY IN THE NEXT FEW WEEKS. END FYI.

9. PLEASE ADVISE RESULTS. KISSINGER

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